

1 ERIC L. WESENBERG (State Bar No. 139696)
2 SAM O'ROURKE (State Bar No. 205233)
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
4 1000 Marsh Road
5 Menlo Park CA 94025
6 Telephone: (650) 614-7400
7 Facsimile: (650) 614-7401

8 Attorneys for Defendant and Counterclaimant
9 MICROSOFT CORPORATION

10 **RECEIVED**

11 **OCT 28 2002**

12 UNITED STATES DISTRICT COURT

13 RICHARD W. WIEKING
14 CLERK, U.S. DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND

17 NORTHERN DISTRICT OF CALIFORNIA

18 OAKLAND DIVISION

19 INTERTRUST TECHNOLOGIES
20 CORPORATION, a Delaware corporation,

21 Plaintiff,

22 v.

23 MICROSOFT CORPORATION, a
24 Washington corporation,

25 Defendant.

26 Case No. C 01-1640 SBA (MEJ)

27 **[PROPOSED] ORDER GRANTING,
28 IN PART, MICROSOFT'S MOTION
FOR A PARTIAL STAY**

Defendant's Counsel are directed to serve this
order upon all other parties in this actions.

AND RELATED CROSS-ACTION.

1 Having considered Defendant Microsoft's Motion for Partial Stay, the supporting
2 and opposing papers, the pleadings and papers on file with the Court, the evidence presented by
3 counsel, oral argument by counsel, and good cause appearing therefor,

4 IT IS HEREBY ORDERED that Microsoft's motion is GRANTED, IN PART, AS
5 FOLLOWS:

6 The parties have selected the following 12 claims for limited Markman claim
7 construction and indefiniteness proceedings:

- 8 ■ U.S. Patent No. 6,185,683 – claim 2
- 9 ■ U.S. Patent No. 6,253,193 – claims 1, 11, 15, 19
- 10 ■ U.S. Patent No. 5,920,861 – claim 58
- 11 ■ U.S. Patent No. 5,892,900 – claim 155
- 12 ■ U.S. Patent No. 5,982,891 – claim 1
- 13 ■ U.S. Patent No. 5,917,912 – claims 8, 35
- 14 ■ U.S. Patent No. 6,157,721 – claims 1, 34

15 The Court shall schedule the hearing on Microsoft's anticipated motion for partial
16 summary judgment of indefiniteness (limited to all or some of these 12 claims) to coincide with
17 the Markman hearing on these 12 claims.

18 All proceedings (including all discovery) unrelated to the claim construction and
19 alleged indefiniteness of these 12 claims shall be stayed pending the Court's ruling on these
20 issues.

21 The relatedness of discovery requests to the limited Markman and indefiniteness
22 proceedings shall be construed broadly and both parties are ordered to make every effort to permit
23 discovery, otherwise relevant and discoverable under the Civil Rules, that is colorably related to
24 or likely to assist in developing issues affecting the claim construction and/or indefiniteness of the
25 12 claims selected by the parties. For example, at the hearing counsel represented that they
26 would not object to discovery directed to the use, by either party, of claim terms selected to be
27 construed at the limited Markman hearing, as well as technical documents mentioning those claim
28 terms. However, the failure to object to such discovery shall not be construed as an admission of

1 the admissibility or relevance of that material, nor shall it be considered a waiver of the right to
2 contest its admissibility for any purpose.

3 This partial stay is granted pursuant to the Court's broad powers of case
4 management, including the power to limit discovery to relevant subject matter and to adjust
5 discovery as appropriate to each phase of litigation as set forth by the Federal Circuit in *Vivid*
6 *Technologies, Inc. v. American Science & Engineering, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999),
7 and pursuant to Federal Rules of Civil Procedure 16(b), (c); 26(b); 42(b).

8 Dated: 11-1, 2002

9 
10 The Honorable Sandra Brown Armstrong
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **DECLARATION OF SERVICE VIA ELECTRONIC MAIL AND U.S. MAIL**

2 I am more than eighteen years old and not a party to this action. My place of
3 employment and business address is 1000 Marsh Road, Menlo Park, California 94025.

4 On November 6, 2002, I served:

5 **ORDER GRANTING, IN PART, MICROSOFT'S MOTION FOR A PARTIAL STAY**

6 By transmitting a copy of the above-listed document(s) in PDF form via electronic mail Michael
7 H. Page at mhp@kvn.com, Steven H. Morrissett at steven.morrissett@finnegan.com,
8 Stephen E. Taylor at staylor@tcolaw.com and James E. Geringer at
james.geringer@klarquist.com and also by placing true and correct copies of the above
documents in an envelope addressed to:

9 John W. Kecker, Esq.
10 Michael H. Page, Esq.
11 KEKER & VAN NEST, LLP
12 710 Sansome Street
13 San Francisco, California 94111
14 Tel. No. 415-391-5400
15 Fax No. 415-397-7188
16 Email: mhp@kvn.com
17 Attorneys for Plaintiff INTERTRUST
18 TECHNOLOGIES CORPORATION

19 Stephen E. Taylor, Esq.
20 TAYLOR & CO. LAW OFFICES
21 1050 Marina Village Parkway, Suite 101
22 Alameda, CA 94501
23 Tel. No. 510-865-9401
24 Fax No. 510-865-9408
25 Email: staylor@tcolaw.com
26 Attorneys for Plaintiff
27 INTERTRUST TECHNOLOGIES
28 CORPORATION

Steven H. Morrissett, Esq.
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
Stanford Research Park
700 Hansen Way
Palo Alto, California 94304-1016
Tel. No. 650-849-6624
Fax No. 650-849-6666
Email: steven.morrissett@finnegan.com

Attorneys for Plaintiff
INTERTRUST TECHNOLOGIES
CORPORATION

John D. Vandenberg, Esq.
James E. Geringer, Esq.
KLARQUIST, SPARKMAN, LLP
One World Trade Center
121 S. W. Salmon Street, Suite 1600
Portland, Oregon 97204
Tel. No: 503-226-7391
Fax No: 503-228-9446
Email: james.geringer@klarquist.com
Attorneys for Defendant and Counterclaimant,
MICROSOFT CORPORATION

and sealing the envelope, affixing adequate first-class postage and depositing it in the U.S. mail
at Menlo Park, California.

Executed on November 6, 2002 at Menlo Park, California.

I declare under penalty of perjury that the foregoing is true and correct.

ANNA FREDDIE